

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.13725 OF 2005

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Dated: 11-09-2006

Between:

The State of A.P. and another . . .Petitioners

And

B.Madhava Rao . . .Respondent

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO
and
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
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WRIT PETITION No.13725 OF 2005
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ORDER: (per RR, J)

Heard both sides and at their request, the writ petition is taken up for disposal.

Aggrieved by the order of the Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'), in O.A.No.6908 of 2000 dated 19.07.2004, the present writ petition is filed.

The respondent/applicant was granted leave from 01.11.1996 to 31.10.1997. Thereafter he sought for leave, but no leave was sanctioned. Eventually, after an enquiry was conducted for his unauthorized absence, the respondent/applicant was imposed the punishment of stoppage of one increment with cumulative effect and the entire period of unauthorized absence from duty was treated as dies-non. Aggrieved thereby, the respondent/applicant filed O.A. before the Tribunal. The Tribunal at paragraphs 9 and 10 of its order held as follows:

“On a careful consideration, it is clear that initially the applicant went on leave which was sanctioned, but subsequently, after lapse of some period, he did not join though he was posted on deputation. Obviously, for deputation of the applicant, his consent was not taken. But the applicant did not report or represented to the

respondents to give posting. So, to that extent, it can be stated that his request leave was not sanctioned. But it does not amount to unauthorized absence when he was earlier sanctioned leave. Once the authorities have chosen to resorting to APCS (CCS) Rules, 1991, definitely the prescribed Rule 20 has to be followed, which is not followed in this case and except perusing the material papers, nothing was done by the enquiry officer. He was under a misconception that the applicant is working temporarily and his services are not regulated. There is no dispute that in the lower category as well as in the category of Deputy Executive Engineer, his services are regularized and so, there is no basis to come to a conclusion that the applicant is not entitled to leave.

No doubt, granting of leave is not a matter of right, but a matter of discretion. So, to that extent, whether to grant leave or not is the discretion of the authorities, but it does not mean that it amounts to unauthorized absence especially when the applicant was not on leave for more than 5 years it cannot be said that the principle of dies-non is applicable in this case. So taking into consideration these facts, both the punishments given to the applicant are liable to be set aside and accordingly set aside, but for the period of his absence, the applicant is entitled to salary only to the extent of availability of leave to his credit. It is left open to authorities to give promotion to higher post which is to be filled by following principles of merit cum seniority, but while doing so, the order passed above should also be considered.”

Learned Government Pleader for Services-I would submit that while the Tribunal had itself held that granting of leave was not a matter of right and was a matter of discretion, nonetheless, on the erroneous premise that, since the applicant was not on leave for a period exceeding five years, it held that the principle of dies-non was not applicable and consequently the order of punishment of stoppage of one increment with cumulative effect, as also the order treating the period of absence as dies-non, was set aside. The Tribunal had also left it open to the authorities concerned to promote the applicant to the higher post following the principles of merit cum seniority.

Learned Government Pleader points out that, while five years is the maximum period for which an employee is entitled for leave, the mere fact that the period of unauthorized absence is for a lesser period, did not entitle an employee to claim, as of right, that he should be granted leave. Learned Government Pleader would submit that the Tribunal had exceeded its jurisdiction in interfering with the quantum of punishment and had acted as an appellate authority, in directing that the respondent/applicant's period of absence from duty should be treated as leave to the extent available to his credit and that he should be paid salary.

We find considerable force in this submission. The fact that the respondent/applicant was not sanctioned leave is not in dispute. Once it is held that the respondent/applicant was not sanctioned leave, the mere fact that leave was available to his credit would not automatically entitle him to claim, as of right, that he be granted leave and, inasmuch as leave was not sanctioned by the competent authority, the period of absence of the respondent/applicant was clearly unauthorized and, therefore, it cannot be said that the action of the petitioners herein in imposing the punishment of stoppage of one increment with cumulative effect and treating the period of unauthorized absence as dies-non is illegal.

Sri M.Ratna Reddy, learned counsel for the respondent/applicant, would submit that the punishment of stoppage of one increment with cumulative effect is a major punishment, and that the respondent/applicant had pointed out several procedural violations under Rule 20 of the A.P.C.S. (CC&A) Rules, 1991. Learned counsel would draw attention of this Court to the findings of the Tribunal in paragraph 9 of the order. Although the Tribunal has held that the procedure prescribed in Rule 20 has not been followed, the order is silent as to which of the procedural requirements has not been

followed by the petitioners herein, and whether such violation has any effect on and has prejudiced the case of the respondent/applicant. These are all matters which should have been considered by the Tribunal before interfering with the quantum of punishment. Since the Tribunal has not considered these aspects, we consider it appropriate to remand the matter to the Tribunal for its consideration afresh in accordance with law.

The writ petition is accordingly allowed. The impugned order of the Tribunal, in O.A.No.6908 of 2000, dated 19.07.2004, is set aside and the matter is remanded to the Tribunal for fresh consideration and disposal. Since the O.A. is of the year 2000, the Tribunal shall consider and pass appropriate orders, as expeditiously as possible, not later than four months from the date of receipt of a copy of this order. No costs.

(B.PRAKASH RAO, J)

11th SEPTEMBER, 2006.

(RAMESH RANGANATHAN, J)

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